



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

[EEOC-2022-0006]

Draft Strategic Enforcement Plan

AGENCY: U.S. Equal Employment Opportunity Commission.

ACTION: Request for information and comment.

SUMMARY: The U.S. Equal Employment Opportunity Commission (EEOC) seeks public comments on a Draft Strategic Enforcement Plan for 2023 – 2027 as part of its strategic planning process.

DATES: Comments must be received by **[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit comments electronically to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. Do not submit the following information in your comment: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. For the Draft Strategic Enforcement Plan, comments will not be accepted through any other method.

Instructions: All submissions received must include the agency name (EEOC) and agency docket number (EEOC-2022-0006). The EEOC may post comments without change, including personal identifiers, contact information, or other personal information, consistent with the EEOC's confidentiality and other legal obligations.

Docket: For access to the comments received, go to <https://www.regulations.gov>.

Copies of the received comments also will be available for review at the Commission's library, 131 M Street, NE, Suite 4NW08R, Washington, DC 20507, between 9:30 a.m. and p.m., from **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until the Commission publishes the plan in final form.

You must make an appointment with library staff to review the comments in the Commission's library by contacting the library staff at (202) 921-3119 (voice), 800-669-6820 (TTY), or 1-844-234-5122 (ASL Video phone).

FOR FURTHER INFORMATION CONTACT: Raymond Windmiller, Executive Officer at raymond.windmiller@eeoc.gov or (202) 921-2705. Requests for this document in an alternative format should be made to the EEOC's Office of Communications and Legislative Affairs at (202) 921-3191 (voice), 1-800-669-6820 (TTY), or 1-844-234-5122 (ASL Video phone).

SUPPLEMENTARY INFORMATION: Please provide any comments to the Draft Strategic Enforcement Plan as indicated in the **ADDRESSES** section above. This Draft Strategic Enforcement Plan follows from the EEOC's Draft Strategic Plan for 2022-2026 (Agency Docket Number: EEOC-2022-0005). The EEOC already invited the public to comment on the Draft Strategic Plan, which concluded on December 5, 2022. Public comments to the Draft Strategic Plan are available on <https://www.regulations.gov>. Comments to the Draft Strategic Enforcement Plan will be considered before the Commission votes to approve a final Strategic Enforcement Plan.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DRAFT STRATEGIC ENFORCEMENT PLAN

Fiscal Years 2023-2027

EXECUTIVE SUMMARY

The U.S. Equal Employment Opportunity Commission (EEOC) was created by the landmark Civil Rights Act of 1964 in direct response to calls for racial and economic justice at the historic March on Washington for Jobs and Freedom. As the primary federal agency charged by Congress with enforcing laws against employment discrimination, the EEOC's mission is to prevent and remedy discrimination and enforce

civil rights in the workplace. EEOC's vision is fair and inclusive workplaces with equal opportunity for all.

The purpose of the EEOC's Strategic Enforcement Plan is to focus and coordinate the agency's work over a multiple fiscal year (FY) period to have a sustained impact in advancing equal employment opportunity. The agency's first Strategic Enforcement Plan (SEP), adopted for FY 2013-2016, established subject matter priorities and strategies to integrate the EEOC's private, public, and federal sector activities. In adopting the FY 2017-2021 SEP, the Commission reaffirmed its subject matter priorities with some modifications and additions.

In developing the draft FY 2023-2027 SEP, the EEOC sought input from the public through a series of listening sessions and a dedicated email box. At the three public listening sessions, the EEOC heard from a total of 35 witnesses, including representatives from civil rights and workers' rights organizations, unions, employer and human resources representatives, scholars, and attorneys representing plaintiffs and defendants in employment discrimination matters. The EEOC received additional public comments through the dedicated email box.

This SEP updates and refines the EEOC's subject matter priorities to reflect progress in achieving the EEOC's vision of fair and inclusive workplaces with equal opportunity for all, while also recognizing the significant challenges that remain in making that vision a reality. The tragic killing of George Floyd, Breonna Taylor, and so many other Black and brown people remain a painful reminder of systemic racism. The COVID-19 pandemic and its economic fallout continue to disproportionately impact people of color and other vulnerable workers, exposing and magnifying inequalities in our society. And high-profile incidents of bias and violence based on race, religion, national origin, and gender have impacted communities across the country—including Black grocery shoppers and workers in Buffalo, NY; Taiwanese churchgoers in Orange

County, CA; patrons at an LGBTQI+ club in Colorado Springs, CO; and Jewish synagogue members in Pittsburgh, PA, among others. While these deep-rooted problems extend far beyond the workplace, the EEOC is committed to doing our part to address systemic discrimination in employment. Addressing inequality in the workplace is a vital step in the fight for justice and equality. The ability to make a living, support a family, and be respected in the workplace based on an individual's skills and experience are critical components of what it means to be human and to enjoy the dignity and sense of self-worth that every individual deserves.

In implementing the Strategic Enforcement Plan, the Commission can – and will – do more to combat employment discrimination, promote inclusive workplaces, and respond to the national call for racial and economic justice. Among other changes, this SEP:

- Expands the vulnerable and underserved worker priority to include additional categories of workers who may be unaware of their rights under equal employment opportunity laws, may be reluctant or unable to exercise their legally protected rights, or have historically been underserved by federal employment discrimination protections—such as people with intellectual and developmental disabilities, individuals with arrest or conviction records, LGBTQI+ individuals, temporary workers, older workers, individuals employed in low-wage jobs, and persons with limited literacy or English proficiency;
- Refines the recruitment and hiring priority to include limiting access to on-the-job training, pre-apprenticeship or apprenticeship programs, temp-to-hire positions, internships, or other job training or advancement opportunities based on protected status;
- Recognizes employers' increasing use of automated systems, including artificial intelligence or machine learning, to target job advertisements, recruit applicants, and make or assist in hiring decisions;

- Updates the emerging and developing issues priority to include employment discrimination associated with 1) the COVID-19 pandemic and other threats to public health, 2) violations of the newly enacted Pregnant Workers Fairness Act of 2022, and 3) technology-related employment discrimination; and
- Preserves access to the legal system by focusing on overly broad waivers, releases, non-disclosure agreements, or non-disparagement agreements.

The Strategic Enforcement Plan will help guide the EEOC's work through all of the agency's activities, including outreach, public education, technical assistance, enforcement and litigation. Through its effective implementation, the agency will continue to advance in the nation's workplaces America's foundational goals of equality and justice for all.

I. GUIDING PRINCIPLES OF THE STRATEGIC ENFORCEMENT PLAN

In developing the draft Fiscal Year 2023-2027 Strategic Enforcement Plan (SEP), the Commission relied on three guiding principles, adapted from the principles underlying the prior two SEPs:

A. *A Targeted Approach – focus on priorities to maximize the EEOC's strategic impact*

The EEOC will take a targeted approach to enforcement. A targeted approach empowers Commission staff throughout the agency to direct attention and resources to the specific priorities identified in this SEP, with the goal of positively influencing employer practices and promoting legal compliance. Targeted enforcement will enhance the Commission's ability to prevent and eliminate unlawful employment practices, develop and clarify the law, and advance its mission and the public interest. A targeted approach includes proactive efforts to address SEP priority issues, including using Commissioner Charges and directed investigations.

B. *An Integrated Approach – collaboration, coordination and consistency*

The EEOC will also ensure that its enforcement is integrated across the agency. An integrated approach means that the EEOC operates as one national law enforcement agency, while also appropriately reflecting local or regional differences. This requires collaboration, coordination and communication between offices, staff, and program areas across the Commission, as well as consistent procedures in public-facing activities throughout the country. An integrated approach means that communications, outreach, education, training, research, and technology enhance and complement administrative and legal enforcement, policy development, and federal sector hearings, appeals, and oversight to advance the agency's mission. An integrated approach also recognizes that, where appropriate, enforcement in the private, public, and federal sectors should be coordinated and consistent.

Further, an integrated approach acknowledges that enforcing workplace civil rights is a shared responsibility that extends beyond the EEOC. For example, the Department of Justice, Department of Labor, Fair Employment Practices Agencies (FEPAs), Tribal Employment Rights Offices (TEROs), and the private bar all play vital roles in preventing and remedying employment discrimination. As a result, it is important that the EEOC continue to collaborate with these entities, and coordinate across the federal government, to advance our shared missions and expand outreach to jobseekers, workers, and employers.

This SEP reaffirms that collaboration, coordination, and sharing of information within the EEOC and with our federal, state, local, and Tribal partners assists the Commission in operating strategically.

C. Accountability and Delivery of Results – taking ownership to achieve results and serve the public given existing resources

As the primary federal agency entrusted by Congress with enforcing the nation's workplace discrimination laws, the EEOC is accountable to the public it serves to ensure

its resources are used strategically and effectively to enforce the law and serve those most in need of its assistance. Accountability means taking ownership to achieve results and deliver timely, consistent, and high-quality service to the public given available resources.

II. PRINCIPLE ONE: A TARGETED APPROACH TO STRENGTHEN STRATEGIC ENFORCEMENT

A. *Focus on Strategic Impact to Leverage EEOC Resources Most Effectively*

To maximize the EEOC's effectiveness as a national law enforcement agency, the Commission must focus on those activities that have the greatest strategic impact. The Commission defines strategic impact as a significant effect on the development of the law or on promoting compliance across a large organization, geographic region, or industry. Relevant factors in determining strategic impact include, among others, the significance of a particular issue, the potential outcome, the number of individuals or employers affected, and the opportunity to prevent or deter future violations and to have broad and lasting impact in advancing equal employment opportunity.

Systemic investigations, resolutions, and lawsuits typically have strategic impact because they involve "pattern or practice, policy and/or class cases where the discrimination has a broad impact on an industry, profession, company, or geographic location." The Commission reaffirms its commitment to a nationwide, strategic, and coordinated systemic program as one of the EEOC's top priorities. The Commission also recognizes that an individual charge or case can have strategic impact, as defined above. Effective strategic enforcement includes a balance of individual and systemic cases, and of national and local issues, recognizing that each may have strategic impact in different and complementary ways.

The Commission's identification of subject matter priorities under this SEP recognizes that focused and collective work on these areas will also have strategic impact. In

addition, the Commission will continue to pursue matters and issues that are not identified as SEP priorities where EEOC enforcement will have a strategic impact in advancing equal employment opportunity.

B. *Subject Matter Priorities for Fiscal Years 2023-2027*

The Commission's goal in identifying agency-wide subject matter priorities is to ensure that the agency's resources are targeted to prevent and remedy discrimination and advance equal employment opportunity in circumstances where EEOC enforcement is most likely to achieve strategic impact. The EEOC will use all its tools, including enforcement, education and outreach, research, and policy development, to advance the agency's priorities.

The Commission relied on the following criteria to identify subject matter priorities for this SEP:

1. Issues that will have broad impact because of the nature and scope of the employment practices addressed, the number of individuals impacted, or the employers or industries affected;
2. Issues affecting workers who may be unaware of their legal rights or reluctant or unable to exercise their rights;
3. Issues involving developing areas of the law, where the Commission's expertise is particularly valuable;
4. Issues involving policies or practices that impede or impair full enforcement of federal employment discrimination laws; and
5. Issues that may be best addressed by government action, including enforcement, based on the nature of the claim, the types of relief available, practical or legal impediments to private enforcement, or the Commission's access to information, data, and research.

C. *Subject Matter Priorities*

The following are the EEOC's subject matter priorities for Fiscal Years 2023-2027:

1. Eliminating Barriers in Recruitment and Hiring

The EEOC will focus on recruitment and hiring practices and policies that discriminate against racial, ethnic, and religious groups, older workers, women, pregnant workers and those with pregnancy-related medical conditions, LGBTQI+ individuals, and people with disabilities. These include:

- the use of automated systems, including artificial intelligence or machine learning, to target job advertisements, recruit applicants, or make or assist in hiring decisions where such systems intentionally exclude or adversely impact protected groups;
- job advertisements that exclude or discourage certain demographic groups from applying;
- the channeling, steering or segregation of individuals into specific jobs or job duties due to their membership in a protected group;
- limiting access to on-the-job training, pre-apprenticeship or apprenticeship programs, temp-to-hire positions, internships, or other job training or advancement opportunities based on protected status;
- limiting employees exclusively to temporary work on a basis prohibited by federal employment laws when permanent positions are available for which they are qualified;
- restrictive application processes or systems, including online systems that are difficult for individuals with disabilities or other protected groups to access; and
- screening tools or requirements that disproportionately impact workers based on their protected status, including those facilitated by artificial intelligence or other automated systems, pre-employment tests, and background checks.

The lack of diversity in certain industries and workplaces (such as construction and high tech, among others), especially in growth industries and industries that benefit from substantial federal investment, are also areas of particular concern. Although this priority typically involves systemic cases, a claim by an individual or small group may qualify if it raises a policy, practice, or pattern of discrimination.

2. Protecting Vulnerable Workers and Persons from Underserved Communities from Employment Discrimination

The EEOC will focus on harassment, retaliation, job segregation, labor trafficking, discriminatory pay, disparate working conditions, and other policies and practices that impact particularly vulnerable workers and persons from underserved communities. With respect to employment discrimination, the Commission views the category of vulnerable workers as including:

- immigrant and migrant workers;
- people with developmental or intellectual disabilities;
- individuals with arrest or conviction records;
- LGBTQI+ individuals;
- temporary workers;
- older workers;
- individuals employed in low wage jobs, particularly teen-aged workers employed in such jobs;
- Native Americans/Alaska Natives; and
- persons with limited literacy or English proficiency.

These workers may be unaware of their rights under equal employment opportunity laws, may be reluctant or unable to exercise their legally protected rights, and/or have historically been underserved by federal employment discrimination protections. Factors such as their immigration status, language barriers, education level, poverty and/or

economic circumstances, geographic location, isolated work conditions, age, disability status, societal stigma, or lack of employment experience can make these workers particularly vulnerable to discriminatory practices or policies.

To implement this priority, district offices and the agency's federal sector program will identify vulnerable workers and underserved communities in their districts or within the federal sector for focused attention, based on their assessment of how the EEOC can most effectively utilize its resources to address issues of concern for these groups. For example, employment discrimination against Native Americans/Alaska Natives, indigenous people from Latin America, agricultural workers, or individuals with arrest or conviction records might be areas of focus as part of this priority.

3. Addressing Selected Emerging and Developing Issues

The EEOC will continue to prioritize issues that may be emerging or developing, including issues that involve new or developing legal concepts or topics that are difficult or complex. The agency is uniquely suited to address these issues given the EEOC's research, data collection, receipt of charges in the private and public sectors, adjudication of complaints and oversight in the federal sector, and ongoing engagement with stakeholders.

Because of the nature of this priority category, the Commission may add or remove issues through interim amendments to the SEP. The following issues currently fall within this category:

- a) Qualification standards and inflexible policies or practices that discriminate against individuals with disabilities;
- b) Protecting individuals affected by pregnancy, childbirth, and related medical conditions under the Pregnancy Discrimination Act (PDA) as well as pregnancy-related disabilities under the Americans with Disabilities Act (ADA) and enforcing the provisions of the newly enacted Pregnant Workers Fairness Act, which requires

employers to make reasonable accommodations for those affected by pregnancy, childbirth, and related medical conditions;

c) Addressing discrimination influenced by or arising as backlash in response to local, national or global events.

Current potentially affected individuals or groups include African Americans, individuals of Arab, Middle Eastern, or Asian descent, Jews, Muslims, and Sikhs. Discriminatory bias that falls under this subcategory may also arise as a result of recurring historical prejudices. The discriminatory practices or affected groups or individuals may change during the time period covered by this SEP;

d) Employment discrimination associated with the COVID-19 pandemic and other threats to public health.

The EEOC hopes that discrimination directly associated with COVID-19 will continue to decline as the nation recovers from the pandemic. Nonetheless, given reports of significant pandemic-related stereotyping and discrimination targeting certain groups—including persons of Asian descent, older workers, and persons with disabilities—the EEOC will continue to be alert to discriminatory practices associated with the COVID-19 pandemic and other threats to public health, such as:

- pandemic-related harassment based on race, national origin, religion, disability, age, gender, or other protected characteristics;
- unlawful denials of accommodations to individuals with disabilities or individuals with sincerely held religious beliefs, practices, or observances;
- unlawful medical inquiries, improper direct threat determinations, or other discrimination related to disabilities that arose during or were exacerbated by the pandemic;

discrimination against persons who have an actual disability or are regarded as having a disability related to COVID-19, including individuals with long COVID, and pandemic-related caregiver discrimination based on a protected characteristic.

e) Technology-related employment discrimination.

The EEOC will focus on employment decisions, practices, or policies in which covered entities' use of technology contributes to discrimination based on a protected characteristic. These may include, for example, the use of software that incorporates algorithmic decision-making or machine learning, including artificial intelligence; use of automated recruitment, selection, or production and performance management tools; or other existing or emerging technological tools used in employment decisions.

4. Advancing Equal Pay for All Workers

The EEOC will continue to focus on combatting pay discrimination in all its forms—on the basis of sex under the Equal Pay Act and Title VII, on other protected bases covered by federal anti-discrimination laws, including race, national origin, disability, and age, and at the intersection of protected bases. Because many workers do not know how their pay compares to their coworkers' and, therefore, are less likely to discover and report pay discrimination, the Commission will continue to use directed investigations and Commissioner Charges, as appropriate, to facilitate enforcement.

The Commission will also focus on employer practices that may impede equal pay or contribute to pay disparities and may lead to violations of statutes the Commission enforces, such as pay secrecy policies, retaliating against workers for asking about pay or sharing their pay with coworkers, reliance on past salary history to set pay, or requiring applicants to specify their desired or expected salary at the application stage.

5. Preserving Access to the Legal System

The EEOC will focus on policies and practices that limit substantive rights, discourage or prohibit individuals from exercising their rights under employment discrimination

statutes, or impede the EEOC's investigative or enforcement efforts. For example, this priority includes policies or practices that deter or prohibit filing charges with the EEOC or cooperating freely in EEOC investigations or litigation. Specifically, the EEOC will focus on:

- a) overly broad waivers, releases, non-disclosure agreements, or non-disparagement agreements;
- b) unlawful, unenforceable, or otherwise improper mandatory arbitration provisions;
- c) employers' failure to keep applicant and employee data and records required by statute or EEOC regulations; and
- d) retaliatory practices that could dissuade employees from exercising their rights under employment discrimination laws. This subcategory focuses on retaliatory practices that detrimentally impact or otherwise affect employees beyond those engaging in protected activity. For example, this subcategory includes taking unwarranted adverse actions against individuals who other employees are aware have filed discrimination charges or complaints, or against individuals who have openly opposed discriminatory employment practices.

6. Preventing and Remediating Systemic Harassment

Harassment remains a serious workplace problem. Over 34 percent of the charges of employment discrimination the EEOC received between FY 2017 and FY 2021 included an allegation of harassment. The EEOC will continue to focus on combatting systemic harassment in all forms and on all bases—including sexual harassment and harassment based on race, disability, age, national origin, religion, color, sex (including pregnancy, gender identity, and sexual orientation) or a combination or intersection of any of these. A claim by an individual or small group may fall within this priority if it is related to a widespread pattern or practice of harassment. To combat this persistent problem, the

EEOC will continue to focus on strong enforcement with appropriate monetary relief and targeted equitable relief to prevent future harassment. The EEOC will also focus on promoting comprehensive anti-harassment programs and practices, including training tailored to the employer's workplace and workforce, using all available agency tools, including outreach, education, technical assistance, and policy guidance.

D. District and Federal Sector-Specific Priorities

The subject matter priorities set forth in the SEP are intended to be broad enough to encompass the needs and priorities of the EEOC's field offices across the country and the federal sector. Nevertheless, District Offices and the Office of Federal Operations may designate additional subject matter priorities for focused attention as needed to address unique or local issues.

E. Implementing SEP priorities

To maximize the agency's effectiveness, the EEOC's resources must align with its priorities. The following guidelines are intended to ensure that cases and matters that advance the SEP subject matter priorities, as well as other charges and cases that have strategic impact, receive the attention and resources needed to advance equal opportunity and enforce civil rights in the workplace.

The EEOC will use SEP priorities to inform charge prioritization, selection of litigation and amicus briefs, federal sector enforcement, and all other activities across the agency including guidance, outreach, and research. The agency will also continue to pursue matters and issues that are not identified as SEP priorities where EEOC enforcement will have a strategic impact.

1. Charge Prioritization

Since at least 1995, the Commission has categorized charges for priority handling based on the likelihood of an investigation resulting in a finding of reasonable cause to believe that discrimination has occurred. Charge prioritization is a continuous process that occurs

throughout the life of a charge; in each case, the investigation should be appropriate to the charge, taking into account the EEOC's resources. Because the demand for the EEOC's services still far exceeds the agency's resources, the Commission must continue to strategically leverage its finite resources to best serve the public and most effectively achieve the goals of the statutes it is charged with enforcing. Clearly defined priorities enable the EEOC to focus resources where government enforcement is most needed and can deliver the greatest impact. Accordingly, a potentially meritorious charge that raises an SEP priority or is likely to have strategic impact should receive priority in charge handling.

2. Litigation Program

The EEOC's litigation program is a critical tool in the agency's efforts to prevent and remedy unlawful employment discrimination and enforce civil rights in the workplace. In developing and selecting cases for litigation, the Office of General Counsel should prioritize meritorious cases that raise SEP priorities or are otherwise likely to have strategic impact. SEP priorities should also be considered in selecting cases for amicus curiae participation.

The Commission encourages the General Counsel, District Directors, and Regional Attorneys to continue to collaborate with the private bar, industry liaison groups, non-profit organizations, the Department of Justice, the Office of Federal Contract Compliance Programs, and other federal, state, and local partners to ensure efficient coordination and support their critical roles in protecting civil rights and ensuring compliance with employment discrimination laws.

3. Systemic Program

Eradicating systemic discrimination has long been one of the EEOC's top priorities, as underscored in the Systemic Task Force Recommendations of 2006, and reaffirmed in EEOC's 2016 review of the Systemic Program, "Advancing Opportunity – A Review of

the Systemic Program of the U.S. Equal Employment Opportunity Commission,” and in each of the EEOC’s prior Strategic Enforcement Plans. The Commission once again reaffirms its commitment to the agency’s systemic program as fundamental to advancing the agency’s mission to prevent and remedy discrimination in our nation’s workplaces. The agency will use the SEP priorities to guide the types of systemic investigations and cases to be pursued by the Commission at the national and local levels. Meritorious systemic charges and cases that raise SEP priorities should be given precedence over other cases to maximize the EEOC’s strategic impact.

4. Alternative Dispute Resolution Program

As the Strategic Enforcement Plan focuses resources on SEP priorities, Alternative Dispute Resolution (ADR) continues to be an important tool to provide service to the public and promote timely resolution of discrimination charges against private, state, and local employers as well as complaints in the federal sector. The EEOC’s ADR program provides an opportunity for individuals filing charges or complaints of discrimination and employers to convene and discuss their respective positions with a neutral mediator. Successful mediations resolve charges and complaints early in the process, benefiting both workers and employers and conserving agency resources. The Commission encourages ADR as an effective and efficient tool to resolve charges and complaints of discrimination.

5. Federal Sector Hearings, Appeals, Oversight and Outreach

The SEP priorities serve several purposes in the federal sector. First, cases that raise these priorities alert the Commission to the potential need for more extensive legal analysis in federal sector appellate decisions, which also could serve as persuasive authority on related issues in the federal courts. Second, EEOC’s federal sector program is responsible for outreach and training to support oversight of federal agency EEO programs. Third, identifying SEP priorities in hearings and appeals provides the EEOC with information

about trends in legal or factual issues to support federal sector outreach, training, compliance reviews, and program evaluations

F. Other Priorities

Chair initiatives should complement, rather than replace, SEP priorities.

III. PRINCIPLE TWO: INTEGRATING EFFORTS ACROSS EEOC

As noted above, the Commission is committed to an integrated approach at the agency that promotes collaboration, coordination, and sharing of information throughout the agency, beginning with the following requirements:

A. Integrating Administrative Enforcement and Legal Enforcement in the Public and Private Sectors

The Commission has a statutory responsibility to receive, investigate, and attempt to resolve charges of discrimination filed against private sector and state and local employers. If the Commission determines there is reasonable cause to believe discrimination has occurred, the agency attempts to end the alleged unlawful practice through an informal and confidential process known as conciliation. If conciliation is unsuccessful, the Commission has the authority to sue private entities under Title VII, Title I of the ADA, and Title II of GINA. (The Department of Justice has public sector litigation authority under these statutes). The EEOC has the authority to sue both public and private entities under the Equal Pay Act and the ADEA.

Having a seamless, integrated effort between the enforcement unit staff who investigate and conciliate discrimination charges and the legal staff who litigate cases on behalf of the Commission is critical for the agency's work to have significant impact and to provide excellent service to the public. To establish a baseline of consistency across all offices, the SEP requires:

1. Legal-Enforcement Interaction

The Commission reaffirms the importance of regular and meaningful consultation and collaboration between investigative and legal staff throughout investigations and conciliations. Effective administrative and court enforcement of workplace civil rights laws requires that the EEOC's investigative and legal staff communicate and work together to best achieve the EEOC's mission.

The Commission commends the interaction between administrative and legal enforcement that exists in many offices and encourages headquarters and field office legal and investigative staff to continue to enhance this important collaboration. The Commission also encourages field offices across the country to collaborate to advance the development of the law and develop systemic cases.

2. Coordination of Systemic Enforcement

Effective systemic enforcement requires communication and collaboration between the EEOC's legal and enforcement units, between headquarters and the field, and across EEOC districts. The Commission encourages cross-district and agency-wide collaboration, consultation, and strategic partnerships to avoid duplicating efforts, promote efficiency, and maximize the impact of the EEOC's systemic program.

B. *Integrating Federal Sector Activities*

The goal of advancing equal opportunity applies in the federal and private sectors, as does the principle of integrated strategies. The Commission encourages the Office of Federal Operations and the Office of Field Programs to continue enhanced communication and coordination within the federal sector. The EEOC's federal sector activities includes its hearings program; appellate program; oversight; and education, training, and outreach programs. It is critical that the Commission leverage its authority and integrate its activities in the federal sector to help federal agencies achieve and maintain "Model EEO Program" status, as mandated by Congress.

C. *Integrating Education and Outreach Activities*

Clear and accessible information is critical to preventing discrimination, promoting compliance with federal EEO laws, and informing individuals of their rights.

Investigations, conciliations, and litigation are only some of the means that the EEOC uses to fulfill its mission and vision. Education and outreach programs, as well as regulations, guidance, and training materials, are also cost-effective law enforcement tools because they promote understanding of the law and voluntary compliance. To ensure the public has easy access to information and technical assistance from the EEOC and that the agency is fully integrating the SEP priorities into its education and outreach efforts, the Commission adopts the following strategies:

- Providing up-to-date, accessible guidance on the requirements of employment discrimination laws

The EEOC's Strategic Plan recognizes the importance of preventing employment discrimination and advancing equal employment opportunity through outreach and education. In furtherance of this important objective, the EEOC is focused on efforts to ensure that members of the public are aware of employment discrimination laws, know their rights and responsibilities under these laws, and have access to the EEOC's services, and that employers, federal agencies, unions, and staffing agencies have the information and resources to advance equal employment opportunity, prevent discrimination, and effectively resolve EEO issues. The EEOC is focused on developing and updating its regulations, guidance, training materials, and other information it provides to the public to ensure that applicants, employees, employers, and members of the public are aware of their rights and responsibilities.

To fully integrate education and outreach activities with the EEOC's SEP priorities, the agency commits to leveraging technology, analytics, and innovative outreach strategies to provide the public, including hard to reach communities and those who lack ready access to EEOC resources, greater access to information about their rights and responsibilities.

By using these additional resources, the agency will be better equipped to ensure that information and training provided to the public advances the agency's priorities.

- Promoting promising practices to help prevent discrimination in the workplace

The Commission commits to integrating the SEP priorities into its education and outreach activities by promoting promising practices for employers to help prevent discrimination from occurring. These resources and leading practices will enable all employers to adopt policies and practices to help prevent employment discrimination and advance equal employment opportunity.

D. *Integrating Research, Data, and Analytics*

Collecting and analyzing data is central to the EEOC's enforcement and educational efforts. The EEOC recognizes the importance of data driven decision-making and the transformative role data can have to make the EEOC more effective in advancing its priorities and serving the public. Since 2018, the Commission has made significant investments in upgrading its ability to collect and use quality data. Notably, the agency created the Office of Enterprise Data and Analytics (OEDA) to promote the use of modern data analytics to facilitate data driven decision-making, including for the purpose of preventing, identifying, investigating, and correcting unlawful employment practices. The EEOC will continue to build its capacity to provide mission-critical evidence and better integrate its information and data policy into the agency's SEP priorities.

E. *Collaborating with State and Local Fair Employment Practices Agencies and Tribal Employment Rights Offices*

State and local Fair Employment Practices Agencies (FEPAs) and Tribal Employment Rights Offices (TEROs) are critical partners in the EEOC's enforcement of equal employment opportunity laws. The EEOC contracts with FEPAs nationwide to process about 40,000 employment discrimination charges each year. Through a dual-filing process made possible by work-sharing agreements, the agencies avoid duplicating work

and make it easier for the public to file charges of discrimination. The EEOC and FEPAs also collaborate in various activities, including investigations, internal training, and outreach events. Similarly, the EEOC contracts with some TEROs who assist the agency in reaching and providing information about non-discrimination laws to tribal and non-tribal members and non-tribal employers operating on or near tribal lands. The TEROs also collaborate with the EEOC by completing interview questionnaire forms for potential charging parties and forwarding them to EEOC field offices.

The EEOC District Offices, FEPAs and TEROs will continue to identify areas for collaboration based on the SEP priorities and the needs in their specific jurisdictions to benefit the public. These areas of collaboration may include, but are not limited to, outreach events and listening sessions with stakeholders to discuss SEP priorities. The district offices will review the effectiveness of the joint activities on an annual basis and adjust as needed.

F. *Supporting Private Enforcement of the Federal Anti-Discrimination Laws*

The Commission has an obligation to ensure meaningful legal protections for individuals while also effectively using its resources to have the greatest impact. Given its limited resources, the EEOC litigates only a small percentage of reasonable cause findings where conciliation efforts have failed. EEOC staff may share with the parties, to the extent permitted under the law and as appropriate, information to facilitate swift enforcement and early resolution of charges. To better assist individuals whose charges are not settled or litigated by the EEOC, district offices will provide information to individuals who seek to contact employment law attorneys for further assistance.

G. *Collaborating with Other Federal Agencies*

The EEOC is the government's lead agency on equal employment opportunity. However, as previously noted, the Department of Justice, the Department of Labor, and other federal agencies also play important roles in enforcing laws prohibiting

employment discrimination. The Commission will continue to collaborate with our sister agencies to further our mission.

IV. PRINCIPLE THREE: DELIVERY OF RESULTS

To ensure that the EEOC is achieving results in accordance with the priorities set forth in the SEP, program offices will report progress to the Commission at semi-annual briefings as follows:

- The Office of Field Programs will report on enforcement activities and outreach, education, and training involving SEP priorities.
- The Office of General Counsel will report on litigation involving SEP priorities.
- The Office of Federal Operations will report on federal sector activities implicating SEP priorities.

The midyear briefing will cover the first and second quarters of the fiscal year, and the annual briefing will cover all four quarters.

EFFECTIVE DATE

The SEP is effective the day following approval by the Commission and will remain in effect until superseded, modified or withdrawn by vote of a majority of members of the Commission.

ACKNOWLEDGEMENTS

The Commission extends its thanks to everyone who participated in the development of the draft SEP, especially the members of the EEOC Strategic Planning Work Group and the SEP Subgroup. The Commission also thanks the EEOC staff who provided feedback on the SEP, the nearly three dozen witnesses who addressed the Commission at the three public listening sessions, and members of the public who submitted comments on the SEP through the dedicated inbox.

Brett A. Brenner

Acting Deputy Chief Operating Officer,
Equal Employment Opportunity Commission

[FR Doc. 2023-00283 Filed: 1/9/2023 8:45 am; Publication Date: 1/10/2023]